FAIR TRADE WITH CHINA ACT OF 2005
(FTCA)

SUMMARY

The Problem.—The United States has no trade policy with China and needs one. It is widely agreed that the U.S. trade relationship with China is, or is becoming, our most important bilateral trade relationship. Yet, the Bush Administration continues to do nothing — even though 2.8 million U.S. manufacturing jobs have been lost since 2001, U.S. exporters are being denied market opportunities to which China agreed when it joined the World Trade Organization in 2001, the U.S. trade deficit with China is spiraling upward, and China has become the most aggressive purchaser of U.S. foreign debt, among other problems.

Over the last four years, the U.S. trade deficit with China has grown massively – reaching $162 billion in 2004 – an increase of more than 30 percent over 2003. That means, in effect, 5 out of 6 ships that dock in the United States from China return empty. At the same time, 5 out of 10 of the fastest growing U.S. exports to China from 2001 to 2003, were waste products.

To pay for the record trade deficit, the U.S. has to borrow massive amounts of money from foreign governments. The United States accumulated more debt to foreigners during the past four years of the Bush Administration than in the first 220 years of the country's history. Every hour since 2001, the United States has accumulated $26.2 million in foreign debt. At the end of 2004, total foreign debt equaled $921 billion — close to 20 percent of U.S. annual output. More than 90 percent of the increase in total federal debt under the Bush Administration has been financed by foreign countries.

China has been a major factor in this trend. From 2001 to 2004, China doubled its share of U.S. foreign debt. In this same period, China's holdings in absolute dollars increased 250 percent, from $61.5 billion to $165.1 billion, second only to Japan. Since 2000, China has been increasing its ownership of U.S. IOU's faster than any other country.

In the face of these mounting problems, the Bush Administration has left largely unused the tools given to it by Congress to deal with China. Accordingly, the legislative proposal below updates and sharpens those tools and directs the Bush Administration to use them on behalf of American workers, farmers and businesses.

<u>The Proposal</u>.—The FTCA will address in an effective, yet WTO-consistent manner the four most urgent problems in the U.S.-China trade relationship: (1) Chinese subsidies to manufactured and agricultural exports; (2) Chinese currency manipulation; (3) export surges caused by China's non-market economy and the Bush Administration's refusal to apply the China-specific safeguard provision of U.S. law, and nonpayment of import duties on Chinese exports; and (4) market access barriers to U.S. exports to China and poor enforcement of U.S. intellectual property rights in China.

<u>DESCRIPTION OF PROPOSAL</u>

The *Fair Trade with China Act of 2005* (FTCA) has four parts. Together, these are intended to address the four key facets of the U.S. trade relationship with China. Accordingly, the FTCA is a <u>comprehensive and effective</u> approach to what is or is rapidly becoming the United States' most important bilateral trade relationship.

<u>Part 1 — Enable U.S. industry and farmers to challenge Chinese subsidies</u>.—The first part amends U.S. countervailing duty (CVD) law to direct the Department of Commerce to investigate subsidies provided by the Chinese government to sectors of industry or agriculture. As noted above, China's *de facto* exemption from the CVD law — by a decision of the Commerce Department in the mid-1980s and confirmed by a U.S. federal court decision — has been a point of growing concern to U.S. industry over the last several years, and has been the subject of a number of legislative proposals. The proposal in the FTCA would be most similar to the English-Davis bill.

Part 1 also directs the U.S. International Trade Commission to investigate and report to the Congress on the scope of all subsidies provided by the Chinese government to its manufacturing and agricultural sectors.

<u>Part 2 — End Currency Manipulation</u>.—The second part of the bill would change U.S. law to make currency manipulation an unjustifiable act, policy or practice under U.S. trade law and then direct USTR to file a case in the WTO to address China's currency manipulation practices. This part of the bill also would clarify the definition of currency manipulation used by the Department of Treasury when determining and reporting to Congress on whether U.S. trading partners are engaging in currency manipulation.

Detailed description. The specific proposal is to (1) amend section 301 of the Trade Act of 1974, (the statute administered by USTR to pry open foreign markets for U.S. exports of goods and services) to define "currency manipulation" as a trade agreement violation under section 301(a), and (2) direct USTR to open an investigation regarding China's currency practices within 90 days of the effective date of the FTCA, unless USTR certifies to Congress that China is no longer manipulating its currency. Section 301(a) requires, with very limited exception, that the USTR act following a successful challenge in the WTO.

The proposal also would amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to define currency manipulation as "protracted large-scale intervention by an authority to undervalue its currency in the exchange market," and to remove the requirement that the United States can only take action against a country that manipulates its currency if the offending country is running a material global trade surplus in addition to a bilateral surplus.

Part 3 — Fix China safeguard statute and other import relief remedies to protect U.S. manufacturers and farmers against surges and unfair imports from China's non-market economy.—Part 3 would narrow the discretion of the USTR and the President to deny relief to a U.S. industry, after the U.S. International Trade Commission (USITC) makes a finding of injury and a recommendation of relief. To date under this statute — enacted as part of the Levin-Bereuter amendment to China PNTR in 2000 — the USITC has recommended relief in three cases and the President has denied relief in every instance. In explaining its decisions, the Bush Administration has inadvertently made clear that it has abused the discretion provided by statute by relying on factors not included in the statute.

Part 3 would also remedy a longstanding problem related to the collection of U.S. antidumping and countervailing duties on Chinese exports. Under current law, new importers of goods from China and other countries are permitted to post bonds, rather than cash deposits, to cover the antidumping and countervailing duties owed while the Department of Commerce calculates the appropriate duty rate for those importers. In many cases, however, the new importers declare bankruptcy or disappear before Commerce can calculate the final duty. As a result, nearly $260 million in duties went uncollected in FY2004, including $224 million related to Chinese imports (*i.e.*, almost 90 percent of the unpaid duties related to imports from one country, China).

Detailed Description. Part 3 would narrow in four respects USTR's and the President's discretion to override the USITC's recommendation for relief: (1) require USTR and the President to make their respective determinations based on the facts found by the USITC and not on new information (on which petitioners have no chance to comment); (2) create a presumption in favor of granting relief when the USITC so recommends; (3) eliminate as a factor to deny relief one factor that is virtually always present in such cases and which USTR has repeatedly used to deny relief – namely, that imports from countries other than China would to some extent fill any vacuum left by a diminishment of China's imports resulting from the safeguard action, and (4) disallow use by USTR of a particular econometric model known as COMPAS to deny relief when the USITC has made an affirmative recommendation.

Part 3 would also ensure that Chinese exporters and importers of Chinese products pay the duties owed to the U.S. Government for goods found to be unfairly traded. In particular, this part of the bill would prohibit Customs from allowing new shippers to post bonds, rather than cash deposits, when importing goods subject to antidumping or countervailing duty orders.

Part 4 — Reinstate Super 301 of U.S. law.—Part 4 would direct USTR to undertake a "top to bottom" review within 90 days of the effective date of the legislation of the barriers facing U.S. exports of agricultural and manufactured goods to China (and other countries), as well as exports of services and protection of intellectual property rights. Part 4 would further require USTR to identify the priority barriers and practices that diminish U.S. exports to China, and to take action to redress them within 90 days of its review (*i.e.*, no later than 180 days after the legislation is enacted).

Detailed description. "Super 301" is a key tool of U.S. trade law that was first signed into law by President Reagan in 1988. The Super 301 provision has been used by past Republican and Democratic administrations to help open closed foreign markets to American-made goods and services. Super 301 would require USTR to prioritize foreign market barriers to American products and services and take action (through WTO in most cases) if the problem cannot be resolved in 90 days.

This section of the bill would provide for the Office of the U.S. Trade Representative to take the following steps:

- **Review within 30 days the practices identified in the National Trade Estimates (NTE) Report**, issued by USTR each year on March 31. Review must be completed by April 30 of each year. The NTE is a compilation of trade barriers facing American exporters of goods and services. Except that for the first year after the legislation is enacted, that the review with respect to Chinese practices be conducted within 90 days of the effective date of the FTCA.

- At completion of review, **identify "priority foreign country practices"** that block American exports of goods and services. "Priority foreign country practices" are defined as those whose elimination is most likely to have the most significant potential to increase U.S. exports, either directly or through the establishment of a beneficial precedent.

- **Submit a report to the Ways and Means and Finance Committees on those practices** within the 30 days (April 30). This report may include potential future priority practices and may indicate as to existing priority practices which ones are already being addressed through other trade laws or in trade negotiations.

- Within 21 days of the submission of the report, **engage in discussions/negotiations with regard to each priority practice the foreign country** to seek a satisfactory resolution of that practice.

- **Initiate an investigation of each priority foreign practice within 90 days** of the submission of the report to W&M and Finance (*i.e.*, by July 31), unless USTR determines that there has been a satisfactory resolution of the matter during the 90-day period.

History of provision. An earlier version of this provision was enacted as part of the Omnibus Trade and Competitiveness Act of 1988. It expired in 1990. The version contained in this legislation was issued as an Executive Order by President Clinton three times, in 1994, 1995 and 1999. The last Clinton Executive Order expired in April 2001; at that time, Super 301 was allowed to lapse by the Bush Administration.